

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3   UNITED STATES OF AMERICA,

4           Plaintiff

5   v.

6   FALASHA ALI,

7           Defendant

Case No.: 2:06-cr-00160-APG-RJJ

**Order Denying Motion for Compassionate  
Release**

[ECF No. 191]

9           Defendant Falasha Ali moves for compassionate release because he is at a greater risk of  
10 serious illness from COVID-19. ECF No. 191.

11           A sentencing court's ability to modify or reduce a sentence once imposed is seriously  
12 limited.<sup>1</sup> The compassionate-release provision of 18 U.S.C. § 3582(c)(1)(A)(i) allows a judge to  
13 reduce a sentence based on "extraordinary and compelling reasons" after the defendant has failed  
14 to convince the Bureau Of Prisons (BoP) to bring such a motion on his behalf.<sup>2</sup> The court must  
15 consider the factors in 18 U.S.C. § 3553(a) "to the extent that they are applicable."<sup>3</sup> Any  
16 sentence reduction also must be "consistent with applicable policy statements issued by the  
17 Sentencing Commission,"<sup>4</sup> including the requirement that the defendant "is not a danger to the  
18 safety of any other person or to the community."<sup>5</sup>

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21 <sup>1</sup> See *United States v. Penna*, 319 F.3d 509, 511 (9th Cir. 2003) (exploring Federal Rules of  
Criminal Procedure 35 and 36); 18 U.S.C. § 3582(c).

22 <sup>2</sup> 18 U.S.C. § 3582(c)(1)(A)(i).

23 <sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> U.S.S.G. § 1B1.13(2).

1 Ali has hypertension and kidney disease, which place him at a higher risk of serious  
2 illness from COVID-19. But the BoP has recently done a better job of controlling the spread of  
3 the virus, and has rolled-out the vaccine to inmates and prison staff. The most-current report for  
4 Pollock USP (where Ali is incarcerated) shows that only three staff members and no inmates  
5 with active cases at this time.<sup>6</sup>

6 Most importantly, Ali was offered the COVID-19 vaccine but refused. ECF No. 200 at  
7 56. Numerous judges “have ruled with consistency that an inmate’s denial of a COVID-19  
8 vaccination weighs against a finding of extraordinary and compelling circumstances.”<sup>7</sup> I agree.  
9 The current medical evidence confirms that Ali can adequately protect himself against the  
10 potentially dangerous effects of COVID-19 by taking the vaccine. His choice not to do so does  
11 not entitle him to a “get out of jail free” card.

12 I cannot find Ali’s situation to be an “extraordinary or compelling circumstance” that  
13 warrants his release. I therefore order that his motion compassionate release [ECF No. 191] is  
14 **DENIED.**

15 DATED this 1st day of June, 2021.

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17 

18 ANDREW P. GORDON  
19 UNITED STATES DISTRICT JUDGE  
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23 <sup>6</sup> See <https://www.bop.gov/coronavirus/> (last checked 6/1/21).

<sup>7</sup> *United States v. Baeza-Vargas*, No. CR100044801PHXJAT, 2021 WL 1250349, at \*3 (D. Ariz. Apr. 5, 2021) (collecting cases).